

Gregg M. Galardi, Esq.  
Ian S. Fredericks, Esq.  
SKADDEN, ARPS, SLATE, MEAGHER &  
FLOM, LLP  
One Rodney Square  
PO Box 636  
Wilmington, Delaware 19899-0636  
(302) 651-3000

Dion W. Hayes (VSB No. 34304)  
Douglas M. Foley (VSB No. 34364)  
MCGUIREWOODS LLP  
One James Center  
901 E. Cary Street  
Richmond, Virginia 23219  
(804) 775-1000

- and -

Chris L. Dickerson, Esq.  
SKADDEN, ARPS, SLATE, MEAGHER &  
FLOM, LLP  
155 North Wacker Drive  
Chicago, Illinois 60606  
(312) 407-0700

Counsel to the Debtors and  
Debtors in Possession

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

- - - - - x  
In re: : Chapter 11  
:  
CIRCUIT CITY STORES, INC., : Case No. 08-35653 (KRH)  
et al., :  
:  
Debtors. : Jointly Administered  
- - - - - x

**DEBTORS' SUPPLEMENTAL OBJECTION TO MOTION FOR  
ALLOWANCE OF THE LATE FILED ADMINISTRATIVE  
EXPENSE CLAIM OF EXPORT DEVELOPMENT CANADA**

The debtors and debtors-in-possession in the above-  
captioned jointly administered cases (collectively, the  
"Debtors")<sup>1</sup> hereby file this supplemental objection (the

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<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Circuit City Stores, Inc. (3875), Circuit City Stores West Coast, Inc. (0785), InterTAN, Inc. (0875), Ventoux International, Inc. (1838), Circuit City Purchasing Company, LLC

"Objection") to the Motion for Allowance of the Late Filed Administrative Expense Claim of Export Development Canada (Docket No. 2960) (the "Late Claim Motion") filed by Export Development Canada ("Movant").<sup>2</sup> In support of the Objection, the Debtors respectfully represent as follows:

### **BACKGROUND**

#### **I. The Bankruptcy Cases**

1. On November 10, 2008 (the "Petition Date"), the Debtors filed with the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division (the "Court"), their voluntary petitions for relief under chapter 11 of title 11 of the United State Code (the "Bankruptcy Code") commencing the above-captioned chapter 11 cases.

2. The Debtors have continued the management of Debtors' business and properties as debtors-in-possession

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(5170), CC Aviation, LLC (0841), CC Distribution Company of Virginia, Inc. (2821), Circuit City Properties, LLC (3353), Kinzer Technology, LLC (2157), Abbott Advertising Agency, Inc. (4659), Patapsco Designs, Inc. (6796), Sky Venture Corp. (0311), Prahs, Inc. (n/a), XSStuff, LLC (9263), Mayland MN, LLC (6116), Courcheval, LLC (n/a), Orbyx Electronics, LLC (3360), and Circuit City Stores PR, LLC (5512). The address for Circuit City Stores West Coast, Inc. is 9250 Sheridan Boulevard, Westminster, Colorado 80031. For all other Debtors, the address was 9950 Mayland Drive, Richmond, Virginia 23233 and currently is 4951 Lake Brook Drive, Glen Allen, Virginia 23060.

<sup>2</sup> The Debtors hereby incorporate herein their Preliminary Objection to Motion for Allowance of the Late Filed Administrative Expense Claim of Export Development Canada (Docket No. 3131) and the Amended Preliminary Objection to Motion for Allowance of the Late Filed Administrative Expense Claim of Export Development Canada (Docket No. 3154).

pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. On November 12, 2008, the Office of the United States Trustee for the Eastern District of Virginia appointed a statutory committee of unsecured creditors (the "Creditors' Committee"). To date, no trustee or examiner has been appointed in these chapter 11 cases.

**II. Relationship Between Movant and TechCraft Manufacturing, Inc.**

4. Movant is a provider of credit insurance to Canadian companies that export goods to companies located in the United States.

5. Movant provided credit insurance to TechCraft Manufacturing, Inc. ("TechCraft") and Movant insured TechCraft's pre-petition sales to the Debtors. Pursuant to Movant's insurance contract with TechCraft, Techcraft assigned its claims to Movant after the Debtors filed their chapter 11 petitions. Late Claim Motion, ¶ 9.

6. Prior to the 503(b)(9) Bar Date, on November 25, 2008, TechCraft filed an application for payment on its claim against the Debtors with Movant. Movant ultimately paid TechCraft an agreed upon percentage of its claim on January 21, 2009.

### **III. The Bar Date for Filing 503(b)(9) Claims**

#### **A. 503(b)(9) Bar Date**

7. On November 12, 2008, this Court entered that certain Order Establishing Bar Date for Filing Requests for Payment of Administrative Expense Claims Under Bankruptcy Code Sections 105 and 503(b)(9) and Approving Form, Manner and Sufficiency of Notice of the Bar Date Pursuant to Bankruptcy Rule 9007 (Docket No. 107) (the "503(b)(9) Bar Date Order").

8. Pursuant to the 503(b)(9) Bar Date Order, this Court approved the form and manner of the 503(b)(9) bar date notice, which was attached as Exhibit A to the 503(b)(9) Bar Date Order (the "503(b)(9) Bar Date Notice"). Pursuant to the 503(b)(9) Bar Date Order and 503(b)(9) Bar Date Notice, the bar date for filing proofs of claim asserting administrative priority claims pursuant to section 503(b)(9) of the Bankruptcy Code was December 19, 2008 (the "503(b)(9) Bar Date").

#### **B. Service of 503(b)(9) Bar Date Notice**

9. On November 12, 2008, the Court appointed Kurtzman Carson Consultants LLC ("KCC") as claims, noticing, and balloting agent for the Debtors in these chapter 11 cases pursuant to 28 U.S.C. § 156(c).

10. On or before November 19, 2008, TechCraft was served with a copy of the 503(b)(9) Bar Date Notice and an attached 503(b)(9) Claim Request Form via overnight mail at P.O. Box 55811, Boston, MA 02205-5811. See Affidavit of Service, filed November 25, 2008, attaching Notice of Bar Date for Filing a Request for Allowance of an Administrative Expense Claim Under 11 U.S.C. § 503(b)(9) and Section 503(b)(9) Claim Request Form (Docket No. 358). The relevant portions of the Affidavit of Service are attached hereto as Exhibit A.

11. In addition, the Debtors published the 503(b)(9) Bar Date Notice in The New York Times, see Affidavit of Publication dated November 21, 2008 (Docket No. 549), The Wall Street Journal, see Affidavit of Publication dated November 24, 2008 (Docket No. 548), and The Richmond Times-Dispatch, see Affidavit of Publication dated November 21, 2008 (Docket No. 547).

12. Movant admits that TechCraft received the 503(b)(9) Bar Date Notice and the 503(b)(9) Claim Request Form, and that TechCraft provided the 503(b)(9) Bar Date Notice and 503(b)(9) Claim Request Form to Movant on December 11, 2008 - prior to the 503(b)(9) Bar Date. See Movant's Response to Interrogatory No. 7.

13. The 503(b)(9) Bar Date also was clearly identified and posted by KCC on its website at [www.kccllc.net/circuitcity](http://www.kccllc.net/circuitcity) (the "KCC Website") under the section of the KCC Website entitled "Important Dates, Deadlines & Documents" on November 13, 2008. See Affidavit of Evan J. Gershbein dated December 9, 2009, attached hereto as Exhibit B and incorporated herein. The items on the "Important Dates, Deadlines & Documents" section appear in chronological order and the 503(b)(9) Bar Date is the fourth item on the list. Additionally, on November 13, 2008, a link to the 503(b)(9) Bar Date Notice was posted next to the 503(b)(9) Bar Date in the "Important Dates, Deadlines & Documents" section of the KCC Website. See id. Further, on November 19, 2008, a link to the 503(b)(9) proof of claim form was posted next to the 503(b)(9) Bar Date in the "Important Dates, Deadlines & Documents" section of the KCC Website. See id.

**C. Content of 503(b)(9) Bar Date Order and Notice**

14. The 503(b)(9) Bar Date Order provided in relevant part:

The Section 503(b)(9) Bar Date Notice shall be mailed by first class mail, postage prepaid to the Debtors' vendors and suppliers of goods.

...

The Debtors are permitted, but not required, to publish notice of the Section 503(b)(9) Bar Date as set forth in the Motion.

...

Any holder of a Section 503(b)(9) Claim that fails to file a Section 503(b)(9) Claim Request or a Section 503(b)(9) Motion by the Section 503(b)(9) Bar Date in accordance with the procedure set forth in this Order is forever barred, estopped and permanently enjoined from asserting its Section 503(b)(9) Claim against the Debtors, their estates, or the property of any of them, and such holder shall not be entitled to receive any distribution in these bankruptcy cases on account of such Section 503(b)(9) Claim or receive further notices regarding such Section 503(b)(9) Claim, absent further order of this Court.

...

Any Section 503(b)(9) Claim Request or Section 503(b)(9) Motion that is not timely filed and served in accordance with this Order on or before the Section 503(b)(9) Bar Date, so as to be actually RECEIVED by the deadline and in the manner set forth herein, shall be disallowed, and the holder of such Section 503(b)(9) Claim shall be forever enjoined from asserting such Section 503(b)(9) Claim against the Debtors, their estates, or the property of any of them, and such holder shall not be entitled to receive any distribution in these bankruptcy cases on account of such Section 503(b)(9) Claim or receive further notices regarding such Section 503(b)(9) Claim, absent further order of this Court.

503(b)(9) Bar Date Order, pgs. 3, 7, 12.

15. The 503(b)(9) Bar Date Notice provided in relevant part:

**CONSEQUENCES OF FAILURE TO FILE SECTION  
503(b)(9) CLAIM REQUEST**

**ANY PERSON OR ENTITY HOLDING A SECTION  
503(b)(9) CLAIM THAT FAILS TO FILE A SECTION  
503(b)(9) CLAIM REQUEST ON OR BEFORE THE BAR  
DATE SHALL BE FOREVER BARRED AND ESTOPPED FROM  
ASSERTING A SECTION 503(b)(9) CLAIM AGAINST THE  
DEBTORS, THEIR ESTATES, OR THE PROPERTY OF ANY  
OF THEM, ABSENT FURTHER ORDER OF THE COURT.**

Bar Date Notice, p. 5.

16. The 503(b)(9) Bar Date Notice provided, in pertinent part, that the 503(b)(9) Bar Date was 5:00 p.m., Pacific Time, on December 19, 2008.

**IV. Movant's Late Claim**

17. Pursuant to its insurance contract with Movant, TechCraft filed an insurance claim with Movant on November 25, 2008. Late Claim Motion, ¶ 9.

18. Movant admits that TechCraft received the 503(b)(9) Bar Date Notice and that TechCraft forwarded the 503(b)(9) Bar Date Notice to Movant on December 11, 2008. Late Claim Motion, ¶ 11. Accordingly, both TechCraft and Movant had notice of the deadline prior to the 503(b)(9) Bar Date.

19. Neither TechCraft nor Movant filed a 503(b)(9) claim against Debtors prior to the 503(b)(9) Bar Date,



December 19, 2008. Movant asserts that TechCraft did not file a 503(b)(9) claim because "it had filed the Application for Payment with EDC on November 25, 2008, and forwarded EDC the [503(b)(9)] Bar Date Notice on December 11, 2008."

Movant's Response to Interrogatory No. 7.

20. Movant did not file its 503(b)(9) administrative expense claim until January 28, 2009 - forty (40) days after the 503(b)(9) Bar Date had expired. Movant states that the 503(b)(9) claim was filed after TechCraft and EDC entered into an assignment agreement and EDC paid TechCraft on its application for payment. Movant's Response to Interrogatory No. 7.

21. Movant then waited over two months to file its Late Claim Motion on April 8, 2009.

#### **V. Movant's Late Claim Motion**

22. By the Late Claim Motion, Movant incorrectly seeks to extend the deadline by which it must file its 503(b)(9) claim to January 21, 2009, thereby preventing the disallowance of its 503(b)(9) claim. Late Claim Motion, ¶ 16.

23. Attached as Exhibit 4 to the Late Claim Motion is the "Creditor Data for Claim Number 8051," presumably from the KCC Website (as hereinafter defined). As set forth on

Exhibit 4, and according to the official claims register, Movant's late claim was filed on January 28, 2009, not January 21, 2009 as alleged in the Late Claim Motion.

**PRELIMINARY STATEMENT**

24. Movant paid out on an insurance claim and is now trying not only to recoup its loss off of the backs of junior creditors in this case, but also to make a profit. While paying only a percentage of its insured's claim, Movant has asserted a late 503(b)(9) claim and a general unsecured claim in the full amount of its insured's claim. Although both had actual notice of the 503(b)(9) Bar Date, neither the insured nor Movant filed a timely 503(b)(9) claim. Movant's failure to timely file a 503(b)(9) claim was not due to excusable neglect, and certainly was not due to any alleged omission on the part of Debtors' counsel. Movant had the 503(b)(9) Bar Date Notice and the 503(b)(9) claim request form prior to the 503(b)(9) Bar Date and simply failed to act on it. No cause exists to excuse Movant's failure to timely file a 503(b)(9) claim and the Late Claim Motion must be denied.

**OBJECTION**

**I. Movant's 503(b)(9) Claim is Barred by the Terms of the 503(b)(9) Bar Date Order and Movant's Motion Should be Denied**

25. Movant did not file a 503(b)(9) claim by the 503(b)(9) Bar Date and, as a result, its claim is time barred and permanently enjoined under the terms of the 503(b)(9) Bar Date Order.

26. The claims bar date in a chapter 11 bankruptcy case serves a very important purpose; "[t]he requirement of a Bar Date in Chapter 11 enables the debtor...to establish the universe of claims with which it must deal and the amount of those claims." In re A.H. Robins Co., Inc., 129 B.R. 457, 459 (Bankr. E.D. Va. 1991). Premised on the imperative purpose of finality of asserting claims against a debtor in chapter 11, courts have not allowed claims filed by creditors after the bar date, absent special circumstances. See In re Provident Hosp., Inc., 122 B.R. 683, 685 (D. Md. 1990), aff'd, 943 F.2d 49 (4th Cir. 1991) (unpublished opinion) ("Because [the claimant] did not timely file his bankruptcy claim after having been given constitutionally sufficient notice, his claim is barred under well-settled authority, 11 U.S.C. 1141(d) and Bankruptcy Rule 3003(c)(2).").

27. Due process requires that the notice of the applicable bar date be "reasonably calculated, under the circumstances, to apprise an interested party of the

pendency of the action." In re Snug Enters., Inc., 169 B.R. 31, 33 (Bankr. E.D. Va. 1994). In the Debtors' cases, sufficient notice was given to Movant such that its due process rights were met.

28. The 503(b)(9) Bar Date Order explicitly provided that the "503(b)(9) Bar Date Notice shall be mailed by first class mail, postage prepaid to the Debtors' vendors and suppliers of goods." 503(b)(9) Bar Date Order, p. 3. In keeping with the 503(b)(9) Bar Date Order, TechCraft, a supplier to the Debtors, was served with the 503(b)(9) Bar Date Notice on November 19, 2008. See Exhibit A.

29. Debtors had no duty or obligation to serve Movant with notice of the 503(b)(9) Bar Date. Movant, an insurer of TechCraft, was unknown to Debtors and Debtors were under no duty to ascertain Movant's identity or the nature of any potential claim held by Movant against Debtors. Movant was not a vendor or supplier to Debtors. Furthermore, Movant had never transacted any business with Debtors. As a result, Debtors were under no duty to provide Movant with notice of the 503(b)(9) Bar Date and Debtors fulfilled their obligation to provide notice to known creditors when they served the 503(b)(9) Bar Date Notice upon TechCraft.

30. Movant admits that TechCraft received the 503(b)(9) Bar Date Notice and that Movant had actual notice of the 503(b)(9) Bar Date over one week prior to the filing deadline. On December 11, 2008, TechCraft forwarded the 503(b)(9) Bar Date Notice to Movant. Late Claim Motion, ¶ 3. As a result, Movant had actual notice of the 503(b)(9) Bar Date over one week prior to the 503(b)(9) Bar Date.

31. The 503(b)(9) Bar Date Order provided that "[t]he Debtors are permitted, but not required, to publish notice of the Section 503(b)(9) Bar Date . . . ."

32. Although under no obligation to provide publication notice of the 503(b)(9) Bar Date, the Debtors nonetheless published the 503(b)(9) Bar Date in three nationally distributed publications. See supra, ¶ 11. The 503(b)(9) Bar Date also was posted on the KCC Website.

33. Despite actual and constructive notice, Movant failed to file a 503(b)(9) claim by the 503(b)(9) Bar Date. As a result of Movant's failure to timely file a proof of claim by or before the 503(b)(9) Bar Date, Movant is "forever barred, estopped and permanently enjoined from asserting its 503(b)(9) Claim against the Debtors, their estates, or the property of any of them..." 503(b)(9) Bar Date Order, p. 6.

**II. Movant Failed to Establish Excusable Neglect and  
Movant's Motion Should be Denied**

34. Section 503(a) of the Bankruptcy Code provides that "[a]n entity may timely file a request for payment of an administrative expense, or may tardily file such request if permitted by the court for cause." In addition, if the request for an extension is made after the expiration of the bar date, a claimant must establish not only "cause," but also that "the failure to act was the result of excusable neglect." Fed. R. Bankr. P. 9006(b).

35. The burden of proving excusable neglect lies with the claimant seeking to file a proof of claim after a court-ordered bar date. In re Enron Corp., 419 F.3d 115 (2d Cir. 2005); see also Thompson v. E.I. DuPont de Nemours & Co., Inc., 76 F.3d 530, 534 (4th Cir. 1996) ("[T]he burden of demonstrating excusability lies with the party seeking the extension...") (quoting In re O.P.M. Leasing Serv., Inc., 769 F.2d 911, 917 (2d Cir. 1985)).

36. In Pioneer Inv. Servs. Co. v. Brunswick Ass'n Ltd. P'ship, 507 U.S. 380, 113 S. Ct. 1489 (1993), the Supreme Court established a two-part test to determine whether a claimant's failure to act in accordance with the filing

deadline was due to "excusable neglect."<sup>3</sup> Id. at 395, 1498. Under the Pioneer framework, a court must first determine whether the claimant's failure to file in a timely manner was the result of neglect. See id. at 394; see also Huennekens v. Marx (In re Springfield Contracting Corp.), 156 B.R. 761, 765 (Bankr. E.D. Va. 1993) (holding that the Supreme Court had established a two-part inquiry for determining whether a party's failure to act was due to "excusable neglect," the first question being whether the failure to act was due to neglect).

**A. Movant's Failure to Timely File a 503(b)(9) Claim Was Not the Result of "Neglect"**

37. "The law since the Pioneer decision has been well established that where a party's actions are deliberate, the party's late filing cannot constitute excusable neglect." In re Banco Latino International, 310 B.R. 780, 785 (Bankr. S.D. Fla. 2004) (internal quotations omitted); see also In re Celotex Corp., 232 B.R. 493, 495 (Bankr. M.D. Fla. 1999) ("After Pioneer, most courts have held that where a party's actions are deliberate, the party's late filing cannot constitute excusable neglect."); see also Agribank v. Breen, 188 B.R. 982, 989 (Bankr. C.D. Ill. 1995) ("[The Pioneer

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<sup>3</sup> To the extent the Court determines that an alternative standard applies, the Debtors submit that the Movant has nonetheless failed to establish "cause" under section 503 for the reasons set forth herein.

Court's] definition [of 'neglect'] virtually excludes any possibility that a late filing which is the result of a party's deliberate choice can constitute 'neglect.'").

38. Movant states that on November 25, 2008, TechCraft filed its insurance claim with Movant. Late Claim Motion, ¶ 9. Movant concedes that TechCraft forwarded the 503(b)(9) Bar Date Notice to Movant on December 11, 2008 - over one week prior to the 503(b)(9) Bar Date.<sup>4</sup> Late Claim Motion, ¶ 11. As a result, Movant had adequate time to prepare and file its 503(b)(9) claim before the expiration of the 503(b)(9) Bar Date.

39. Movant's failure to file a 503(b)(9) claim appears to be the result of deliberate inaction, rather than "neglect." Because Movant had knowledge of the 503(b)(9) Bar Date at least one week prior to the deadline and also had knowledge of its claim against the Debtors twenty-four (24) days prior to the 503(b)(9) Bar Date, Movant's conduct must be characterized as "deliberate." See Pioneer Inv. Servs. Co., 507 U.S. at 388 (stating that neglect "encompasses both simple, faultless omissions to act and, more commonly, omissions caused by carelessness"). Movant's

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<sup>4</sup> Notably, Movant received the 503(b)(9) Bar Date Notice and claim form after sending its e-mail to counsel for the Debtors.



failure to timely file its 503(b)(9) claim was not the result of neglect. Accordingly, Movant should not be allowed to file a late claim.

**B. Alternatively, Movant's Neglect Was Not Excusable**

40. If a claimant is able to overcome the burden of proving that its failure to timely file a claim was the result of neglect, a court must then turn to the secondary inquiry of whether or not such neglect is "excusable." See id. at 395. In Pioneer, the Court held that the determination of whether the claimant's neglect is excusable is "at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission." Id. In keeping with the equitable nature of such a determination, the Supreme Court set forth four factors to be considered when contemplating a motion to allow a late-filed proof of claim under Rule 9006(b). Those factors include: (1) the danger of prejudice to the debtor; (2) the length of the delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the claimant; and (4) whether the claimant acted in good faith. Id. at 395.

41. In Thompson v. E.I. DuPont de Nemours & Co., Inc., 76 F.3d 530 (4th Cir. 1996), a unanimous panel of the

U.S. Court of Appeals held that the "excusable neglect" standard was not an easy one to satisfy: "'excusable neglect' is not easily demonstrated, nor was it intended to be." Id. at 534; see also In re Best Products Co., 140 B.R. 353, 359 (S.D.N.Y. 1992) (characterizing the bar date as a court-imposed statute of limitation that is "peremptory"). Inadvertence, ignorance of the rules, or mistakes construing the rules do not usually constitute "excusable neglect." See Thompson, 76 F.3d at 534; see also In re Best Products Co., Inc., 140 B.R. at 358 ("Except when a known creditor is not listed on the schedules and hence fails to receive notice of the filing deadline, the bar date is strictly enforced.") (citing Wright v. Placid Oil Co., 107 B.R. 104, 106 (N.D. Tex. 1989)). "Even upon a showing of 'excusable neglect,' whether to grant an enlargement of time still remains committed to the discretion of the district court." Thompson, 76 F.3d at 532.

**1. Movant Has Failed to Provide an Adequate Reason for Failing to Timely File**

42. "The most important of the factors identified in Pioneer for determining whether 'neglect' is 'excusable' is the reason for the failure to file." Thompson, 76 F.3d at 534. "[T]he four Pioneer factors do not carry equal weight;

the excuse given for the late filing must have the greatest import. While prejudice, length of delay, and good faith might have more relevance in a close[] [sic] case, the reason-for-delay factor will always be critical to the inquiry." In re Enron Corp., 419 F.3d 115, 122-24 (3d Cir. 2005) (quoting Graphic Commc'ns. Int'l Union v. Quebecor Printing Providence, Inc., 270 F.3d 1, 5-6 (1st Cir. 2001)); see also Pioneer Inv. Servs. Co. v. Brunswick Ass'n Ltd. P'ship, 507 U.S. at 395 (stating that it is also significant whether or not the reason for the failure to file was "within the reasonable control of the movant."). In this case, Movant offers no plausible reason for its failure to file a proof of claim until forty (40) days after the 503(b)(9) Bar Date.

43. Administrative failure on the part of the claimant is generally insufficient to warrant a finding of "excusable neglect." See Thompson, 76 F.3d at 534 ("'[A] mere concession of palpable oversight or administrative failure generally has been held to fall short of the necessary showing...'" (quoting In re O.P.M. Leasing Serv., Inc., 769 F.2d 911, 917 (2d Cir. 1985); see also In re Century Brass Products, Inc., 72 B.R. 68 (Bankr. D. Conn. 1987) (holding that a delay resulting from a breakdown in creditor's

internal procedures does not constitute excusable neglect within the meaning of Rule 9006(b)(2) of the Federal Rules of Bankruptcy Procedure); see also In re Figueroa, 33 B.R. 298, 303 (Bankr. S.D.N.Y. 1983) (holding that courts generally refuse to grant relief when late filing is caused by internal breakdowns because a finding that a breakdown in internal procedures caused the noncompliance shows that the events were not beyond the control of the creditor).

44. The assignment and transfer of the bankruptcy claim from TechCraft was clearly "within the reasonable control" of the Movant. TechCraft timely informed Movant on November 25, 2008, that it would be seeking compensation pursuant to its insurance policy with Movant. As a result, Movant had notice of the nature of its claim against Debtors on November 25, 2008, well in advance of the 503(b)(9) Bar Date. Notably, Movant also was in receipt of the 503(b)(9) Bar Date Notice over one week prior to the filing deadline.

45. Movant is not an unwitting victim of bankruptcy procedure, but rather a regular participant in such procedures and as such should be held to the same, if not a higher standard, as the thousands of other claimants who timely filed their claims in the instant case. A failure to enforce the relevant bar dates against an assignee-insurer

of a creditor's claim would entirely remove the incentives to such parties to timely file their claims in future cases.

46. The Supreme Court noted in Pioneer that "inadvertence, ignorance of the rules, or mistakes construing the rules do not usually constitute 'excusable neglect.'" 507 U.S. at 392. "Similarly, preoccupation or an excessive workload does not typically render a mistake excusable." In re Enron Corp., 419 F.3d 115 (3d Cir. 2005) (citing Pioneer, 507 U.S. at 398 ("we give little weight to the fact that counsel was experiencing upheaval in his law practice at the time of the bar date.")).

47. As a result, this Court should disregard Movant's contention that its heavy workload contributed to the "excusable" nature of its conduct. Late Claim Motion, ¶ 12 ("It is possible for information in fast-paced bankruptcy cases to be delayed in reaching those within [Movant] that perform functions such as filing proofs of claim due to its size, the sheer number of claims being filed in today's economic climate and the lengthy claims reconciliation process."). The fact that Movant was preoccupied or busy during the filing period is irrelevant to a determination of whether the Movant is able to satisfy the stringent excusable neglect standard.

48. Additionally, Movant states that its "regular practice" is to contact counsel to determine if there is a "looming bar date." Movant's Amended Response to Interrogatory No. 10. If, as is the case here, new information is received after counsel is contacted (i.e., Movant received the 503(b)(9) Bar Date Notice after contacting counsel for the Debtors), it is solely Movant's failure to act upon such information that caused the untimely filing, which does not even begin to rise to the level of excusable neglect.

49. Movant had actual notice of the bar date for filing 503(b)(9) claims at least one week prior to the 503(b)(9) Bar Date and nonetheless failed to file a timely 503(b)(9) claim. Rather than accept responsibility for its failure, it points the finger at counsel for the Debtors as having materially omitted this information in an e-mail. See Late Claim Motion, ¶ 13.

50. Movant is in the business of insuring "companies that export goods to companies located in the United States." Late Claim Motion, ¶ 7. As a result, Movant is not the type of party that can easily claim ignorance of bankruptcy procedures. See Late Claim Motion at ¶ 12 ("[Movant] is a large entity, and many insurance claims

similar to TechCraft's are filed with it."). Movant knew as of November, 25, 2008, the date on which TechCraft filed its insurance claim with Movant, that it had a claim against the Debtors. Additionally, Movant had sufficient time in which to file a proof of claim after its physical receipt of the 503(b)(9) Bar Date Notice on December 11, 2008. The 503(b)(9) claim form is not excessively complicated, and the accompanying instructions and notice were quite clear - the bar date was December 18, 2008 and Movant simply failed to file a timely claim. See 503(b)(9) Bar Date Notice, pp. 2-3 (Contents of Section 503(b)(9) Claim Requests).

51. Movant also had constructive notice of the impending 503(b)(9) Bar Date. On November 19, 2008, the Debtors published the 503(b)(9) Bar Date Notice in The New York Times (Dkt. No. 549), The Wall Street Journal (Dkt. No. 548), and The Richmond Times-Dispatch (Docket No. 547). Publication notice had not been required by the 503(b)(9) Bar Date Order, yet Debtors took this extra step to ensure that unknown creditors would be provided with notice of the impending bar date. See 503(b)(9) Bar Date Order, p. 3.

**2. Debtors Will Be Prejudiced if Movant's Claim Is Allowed**

52. Another factor to be considered when determining whether a party's failure to act in a timely manner was attributable to "excusable neglect" is whether the party's failure to act in a timely manner will prejudice the opposing party. See Pioneer, 507 U.S. at 395. However, the presence or absence of prejudice to the Debtors is only one of several factors to be considered by the court in determining whether the claimant has satisfied the excusable neglect standard. See In re Keene Corp., 188 B.R. 903, 909 (S.D.N.Y. 1995) ("We ... conclude that an approach that considers all the relevant factors, but recognizes that they all need not point in the same direction, is the correct one. Conversely, we question the wisdom of an approach under which the court must ultimately ignore the creditor's culpability and permit the filing of an [sic] late claim if prejudice is absent.").

53. The allowance of Movant's late claim could conceivably have a substantial, negative impact on the dividend to junior claimants. The allowance of these late claims would significantly diminish the distribution projected for those claimants that filed timely proofs of



claim. See In re Intelligent Med. Imaging, 262 B.R. 142, 146 (Bankr. S.D. Fla. 2001) (disallowing the late claim in a liquidating chapter 11 case because "the claim would produce substantial prejudice to the other creditors in the case, in that it would greatly reduce the distribution to unsecured creditors."). In addition, if this Court were to grant Movant's motion, it may encourage the filing of many similar motions, and the amount of the Court's time that would be devoted to considering late claim motions in this case would be substantial.

54. Were this Court to grant the relief requested by the Movant, it also would wreak administrative havoc in the Debtors' claims resolution process, especially with respect to alleged administrative claims which could, in the aggregate, have a substantial impact on distributions to junior creditors, as well as affect the liquidation analysis and administrative claims pool with respect to confirmation of the plan of liquidation. The amount of time and legal expense that the Debtors would have to devote to responding to such motions, rather than continuing to reconcile timely filed claims, also could be substantial. See In re Calpine Corp., 2007 U.S. Dist. LEXIS 86514 at \*19 (S.D.N.Y. Nov. 21, 2007) (finding that "the disruption in the judicial

administration of the estate can constitute prejudice, apart from any decreased distribution"); see also In re Nat'l Steel Corp., 316 B.R. 510, 520 (Bankr. N.D. Ill. 2004) (disallowing a late claim because allowing the claim would require considerable analysis and time and would severely prejudice the debtors and their ability to effectively and efficiently review and dispose of claims and make distributions under the plan). The allowance of late claims at this stage of the case also would severely prejudice the administration of this mature liquidating chapter 11 case.<sup>5</sup>

55. Allowing Movant's late claim could easily open the flood gates for additional late claimants to come forward. As one court in this district has previously noted: "[i]f the court were to allow [Movant] to file a late claim solely because [Movant was] unaware of the bankruptcy filing, it is difficult to see on what basis the court could deny the same relief to dozens or perhaps hundreds of creditors who might now come forward." In re US Airways, Inc., 2005 Bankr. LEXIS 2696, \*24-25 (E.D. Va. 2005); see also In re Dana

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<sup>5</sup> In its Response to Interrogatory No. 8, Movant incorrectly states that the allowance of the late claim will have no effect on "the filing of any such plan" and that the Debtors "have not filed a disclosure statement or plan with the Court." Movant has clearly failed to review the docket to see that a disclosure statement has been approved, an amended plan filed, and the continued hearing on confirmation of the plan is scheduled for January 28, 2009.

Corp., 2007 Bankr. LEXIS 1394 at \*19 (In a case dealing with a late-filed 503(b)(9) claim in a chapter 11 bankruptcy, the court held that "the floodgates argument is a viable one ... [g]ranteeing the requested relief ... would set an untenable precedent and would likely precipitate a flood of similar claims."); In re US Airways, Inc., 2005 Bankr. WL 3676186, \*8 (E.D. Va. 2005) ("[A]llowance of claims filed many months after the passage of the bar date would frustrate the efforts of both the participants and the court.")

56. Movant's Late Claim Motion should be denied because its allowance would significantly prejudice the Debtors, open the door to a flood of late claims, reduce the recovery to junior creditors, and result in significant investment of time and expense on behalf of this Court, the Debtors and their professionals.

### **3. The Length of Delay Weighs Against the Allowance of Movant's Late Claim**

57. Another factor this Court must consider is the length of the delay. The length of Movant's delay in this case is significant and weighs against the Movant. Movant received TechCraft's insurance claim on November 25, 2008 and received TechCraft's 503(b)(9) claim form and notice of

the 503(b)(9) Bar Date on December 11, 2008 - in advance of the 503(b)(9) Bar Date.

58. Despite early notice of the nature of the claim, Movant failed to file a 503(b)(9) claim by the 503(b)(9) Bar Date and did not file such claim until January 28, 2009, forty (40) days after the 503(b)(9) Bar Date had passed.

59. It is not uncommon for courts to deny a proof of claim filed just a few days after the bar date. See Thompson v. E.I. DuPont de Nemours & Co., Inc., 76 F.3d 530 (4th Cir. 1996) (refusing to enlarge the period for filing a notice of appeal when the litigant mailed the notice three days prior to the expiration of the deadline but the notice did not arrive until three days after the expiration of the deadline); see also In re Dishman, 257 B.R. 780 (Bankr. E.D. Va. 2000) (refusing to enlarge time for filing of complaint where complaint was filed two days late due to a delay in mail delivery caused by inclement weather); see also Avnet, Inc. v. Maxwell, 2006 WL 1519333 (N.D. Ill.) (refusing to accept late filing where claim was faxed to claims agent on bar date and delivered by courier to claims agent one day after the bar date); see also In re Yankee Distrib. Co., 53 B.R. 222 (Bankr. D. Vt. 1985) (motion to allow late proof of claim was denied where proof of claim arrived one day after

the bar date). As a result of Movant's substantial delay in filing its 503(b)(9) claim and Movant's failure to provide a reasonable justification for such delay, Movant's late 503(b)(9) claim should be disallowed.

60. Movant has failed to demonstrate sufficient facts to warrant this Court's finding of "excusable neglect." Because Movant had notice of the nature of TechCraft's claim by November 25, 2008, had constructive notice of the 503(b)(9) Bar Date on November 19, 2008 and had actual receipt of the 503(b)(9) Bar Date Notice by December 11, 2008, Movant has failed to provide this Court with any reason why it should be excused from its failure to timely file its claim by the 503(b)(9) Bar Date.

61. Movant's failure to file a 503(b)(9) claim by the 503(b)(9) Bar Date was due to inaction, not neglect, and even if Movant's failure to file a 503(b)(9) claim was due to neglect, such neglect is not excusable. Even if Movant could prove excusable neglect, which the Debtors submit is not possible under the facts Movant alleges, the Court should, in its discretion deny Movant's Late Claim Motion because, among other reasons, any potential claims held by Movant are barred by the 503(b)(9) Bar Date Order.

**III. Movant's Contention that Debtors' Counsel Provided Misleading Information To Movant Is Without Merit**

62. Movant alleges that it should be allowed to file a late 503(b)(9) claim because, in part, Debtors' counsel purportedly supplied Movant with misleading information. In support of this contention, Movant's counsel rely upon a string of emails sent by and between Jo-Ann Keech-Barker ("Barker"), an employee of Movant, and counsel for the Debtors. A true and correct copy of the emails is attached hereto as Exhibit C and incorporated herein.

63. The emails cited by Movant do not provide any indication that Debtors' counsel misled Movant with regard to the 503(b)(9) Bar Date. In fact, the opposite is true. The emails provide a link to the KCC Website and advise Movant to consult the KCC Website for information on filing deadlines. See Exhibit C. Therefore, the emails with Debtors' counsel provided the Movant with actual notice - albeit indirect - of the 503(b)(9) Bar Date on December 2, 2008.

64. Based on the email correspondence, it is inconceivable that Movant is alleging that it was misled. The relevant 503(b)(9) Bar Date information was clearly

identified and easily accessible on the KCC Website. See Exhibit B.

65. Additionally, debtors' counsel are under no duty to provide creditors with information regarding bar dates. See In re Jackson, 98 B.R. 738, 741 (Bankr. D. Md. 1986) (stating that debtor's counsel is under no duty to respond to creditor inquiries regarding filing deadlines); see also In re First Software Corp., 97 B.R. 711, 719 (Bankr. D. Mass. 1988) (affirming the bankruptcy court's rejection of claimant's motion to extend time for filing and stating that debtor's counsel was under no duty to make the claimant aware of the filing deadline).

66. Moreover, after contacting Debtors' counsel, Movant was provided with a copy of the 503(b)(9) Bar Date Notice on December 11, 2008 - in advance of the 503(b)(9) Bar Date. Even if this Court were to find that Debtors' counsel had materially omitted information regarding the 503(b)(9) Bar Date, which it vehemently denies, Movant nonetheless obtained actual notice of the impending 503(b)(9) Bar Date in advance of its expiration. Movant has only itself to blame for its failure to act on the information provided in the 503(b)(9) Bar Date Notice.

67. The undisputed facts are that Movant received the 503(b)(9) Bar Date Notice prior to the 503(b)(9) Bar Date and failed to timely file a claim during the reconciliation process with its insured. Its insured failed to file a claim because it had provided the claim information to Movant. Movant was contractually obligated to pay out on its insured's claim (at a percentage of the total amount), which it ultimately paid, and which Movant now is attempting to recover in full from the Debtors' estates.<sup>6</sup> Movant has failed to meet its burden of proving excusable neglect and no cause exists for extending the time within which it may file its claim. Accordingly, the Late Claim Motion must be denied.

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<sup>6</sup> In addition to the late 503(b)(9) claim, Movant also has asserted a general unsecured claim, to which the Debtors intend to object.



**CONCLUSION**

WHEREFORE, for the foregoing reasons, the Debtors respectfully request that this Court sustain this Objection, deny the Late Claim Motion, and grant the Debtors such other and further relief as it deems just and proper.

Dated: January 11, 2010  
Richmond, Virginia

Gregg M. Galardi, Esq.  
Ian S. Fredericks, Esq.  
SKADDEN, ARPS, SLATE, MEAGHER &  
FLOM, LLP  
One Rodney Square  
PO Box 636  
Wilmington, Delaware 19899-0636  
(302) 651-3000

- and -

Chris L. Dickerson, Esq.  
SKADDEN, ARPS, SLATE, MEAGHER &  
FLOM, LLP  
155 North Wacker Drive  
Chicago, Illinois 60606  
(312) 407-0700

- and -

/s/ Douglas M. Foley  
Dion W. Hayes (VSB No. 34304)  
Douglas M. Foley (VSB No. 34364)  
MCGUIREWOODS LLP  
One James Center  
901 E. Cary Street  
Richmond, Virginia 23219  
(804) 775-1000

Counsel for Debtors in  
Possession

\10015562

**Exhibit A**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

In re:

CIRCUIT CITY STORES, INC.,  
et al.,

Debtors.<sup>1</sup>

X  
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X

## AFFIDAVIT OF SERVICE

I, Evan Gershbein, being duly sworn according to law, depose and say that I am employed by Kurtzman Carson Consultants LLC, the Court appointed claims and noticing agent for the Debtors in the above-captioned cases.

On November 19, 2008, copies of the following documents were served via overnight mail upon the parties set forth on the service list attached hereto as **Exhibit A**:


1. Notice of Bar Date for Filing a Request for Allowance of an Administrative Expense Claim Under 11 U.S.C. § 503(b)(9); and Section 503(b)(9) Claim Request Form (Docket No. 145)
2. Notice of Entry of Interim Order Under Bankruptcy Code Sections 105(a), 362, 503(b), 507(a), 546(c), and 546(h) (I) Granting Administrative Expense Status to Obligations from Postpetition Delivery of Goods; (II) Authorizing Payment of Expenses in the Ordinary Course of Business; (III) Authorizing Debtors to Return Goods; and (IV) Establishing Procedures for Reclamation Demands (Docket No. 146)

<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Circuit City Stores, Inc. (3875), Circuit City Stores West Coast, Inc. (0785), InterTAN, Inc. (0875), Ventoux International, Inc. (1838), Circuit City Purchasing Company, LLC (5170), CC Aviation, LLC (0841), CC Distribution Company of Virginia, Inc. (2821), Circuit City Properties, LLC (3353), Kinzer Technology, LLC (2157), Abbott Advertising Agency, Inc. (4659), Patapasco Designs, Inc. (6796), Sky Venture Corp. (0311), Prah, Inc. (n/a), XSStuff, LLC (9263), Mayland MN, LLC (6116), Courchevel, LLC (n/a), Orbyx Electronics, LLC (3360), and Circuit City Stores PR, LLC (5512). The address for Circuit City Stores West Coast, Inc. is 9250 Sheridan Boulevard, Westminster, Colorado 80031. For all other Debtors, the address is 9950 Mayland Drive, Richmond, Virginia 23233.



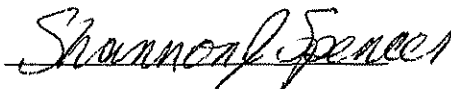
08356530811250000000000002

Dated: November 24, 2008

  
Evan Gershbein

State of California, County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 24<sup>th</sup> day of November, 2008, by Evan Gershbein, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature: 



Circuit City Stores, Inc.  
Creditor Matrix

Creditor Name	Creditor Notice Name	Address1	Address2	Address3	City	State	Zip	Country
TECH CONFERENCES INC		731 MAIN ST STE 03			MONROE	CT	06468	
TECH CONFERENCES INC		470 MISSION ST STE 2			CAROL STREAM	IL	60188	
TECH CONNECTORS								
TECH CRAFT INC		PO BOX 83097	W83097		WOBURN	MA	01813-3097	
TECH CRAFT INC		PO BOX 651138			CHARLOTTE	NC	28265-1138	
TECH DATA CORP		6000 FELDWOOD RD			COLLEGE PARK	GA	30349	
TECH DATA CORP		PO BOX 93836			CHICAGO	IL	60673-3836	
TECH DATA CORPORATION		PO BOX 27847			ATLANTA	GA	30384-7847	
TECH DATA CORPORATION		PO BOX 33974			HARTFORD	CT	06150-3074	
TECH DEPOT		6 CAMBRIDGE DR			TRUMBULL	CT	06611	
TECH ELECTRONICS		4323 ATLANTA HWY			MONTGOMERY	AL	35109	
TECH ELECTRONICS INC		6437 MANCHESTER AVE			ST LOUIS	MO	63139	
TECH GROUP INC		2001 TIDEWATER COLONY DRIVE	SUITE 101		ANNAPOLIS	MD	21401	
TECH GROUP INC		SUITE 101			ANNAPOLIS	MD	21401	
TECH GROUP INC, THE		FOURTH FLOOR			ANNAPOLIS	MD	21401	
TECH GROUP INC, THE		147 OLD SOLOMONS ISLAND RD	FOURTH FLOOR		ANNAPOLIS	MD	21401	
TECH HEATING AIR CONDITIONING		PO BOX 9713000			DALLAS	TX	75397-1300	
TECH HEATING AIR CONDITIONING		PO BOX 9713000			DALLAS	TX	75397-1300	
TECH II ELECTRONIC SVC CO		1638 FARMINGTON AVE			KENSINGTON	CT	06037	
TECH KNOWLEDGE COMPUTER		11676 BAPTIST CHURCH RD			ST LOUIS	MO	63128	
TECH KNOWLEDGE COMPUTER								
TECH MAINTENANCE SUPPLY INC								
TECH NI COMM INC		3422 W63RD ST			CHICAGO	IL	60629	
TECH PAINTING		28170 AVENUE CROCKER NO 100			VALENCIA	CA	91355	
TECH RENTALS INC		1655 S EUGLID SUITE G			ANAHEIM	CA	92602	
TECH RENTALS INC								
TECH RENTALS INC		6550 McDONOUGH DR			NORCROSS	GA	30093	
TECH RESOURCE GROUP INC		2 HANOVER SQUARE SUITE 2330			RALEIGH	NC	27601	
TECH SER INC		27 MAUCHLY ROAD STE 210			IRVINE	CA	92618	
TECH SITE		PO BOX 11280			RICHMOND	VA	23290-1280	
TECH SITE		711 N ROCKCLIFF RD			RICHMOND	VA	23290-1290	
TECH SPECIALISTS		106 EAST 1120 NORTH SUITE B			FAYETTEVILLE	AR	72701	
TECH SUPPORT		920 WAUGH LANE			LOGAN	UT	84341	
TECH TAG & LABEL		1501 W PARK AVENUE			UKIAH	CA	95482	
TECH TAG & LABEL		1801 N PENN RD			PERKASIE	PA	18944	
TECH TARGET COM					HATFIELD	PA	19440	
TECH TARGET COM		117 KENDRICK ST STE 800			NEEDHAM	MA	02464	
TECH TRON TELEVISION CO INC		94 QUENTIN RD			BROOKLYN	NY	11223	
TECH TRONICS INC		220A THREE BROTHERS RD			SHELBY	NC	28152	
TECH TV		12312 W OLYMPIC BLVD			LOS ANGELES	CA	90084	
TECH TV		G4 MEDIA INC FILE 50460			LOS ANGELES	CA	90074-0460	
TECH TV & VCR INC		1614 N GRAND			ENID	OK	73701	
TECHBARGAINS COM LLC		1819 POLK ST STE 218			SAN FRANCISCO	CA	94109	
TECHCENTER								
TECHCENTER		7850 12TH AVE S			BLOOMINGTON	MN	55425	
TECHCRAFT MANUFACTURING INC		PO BOX 55811			BOSTON	MA	02205-5811	
TECHDATA		5301 TECHDATA DRIVE			CLEARWATER	FL	34620	
TECHDATA		PO BOX 151549			CHEVY CHASE	MD	20825-1549	
TECHHEAD		111 N 17TH ST			RICHMOND	VA	23218	
TECHHEAD		111 N 17TH ST			RICHMOND	VA	23218	
TECHLINE ELTRAX INC		PO BOX 5328			BOSTON	MA	02208	
TECHLINK TRAINING INC		PO BOX 226			FANWOOD	NJ	07023	
TECHNA GLASS		460 W 9000 S			SANDY	UT	84070	
TECHNI TOOL INC		PO BOX 827014			PHILADELPHIA	PA	19182-7014	
TECHNI TOOL INC		PO BOX 388			PLYMOUTH MEETING	PA	19462	
TECHNI TOOL INC		PO BOX 1117			WORCESTER	PA	19490-1117	
TECHNIBILT LTD								
TECHNIBILT LTD		PO BOX 60297			CHARLOTTE	NC	28260	
TECHNIBILT LTD		PO BOX 309			NEWTON	NC	28658	
TECHNIBILT LTD		PO BOX 309			NEWTON	NC	28658	
TECHNIBILT LTD		PO BOX 310			NEWTON	NC	28658	
TECHNIBILT LTD		700 EASE P ST			ATLANTA	GA	30353-2078	
TECHNIBILT LTD		PO BOX 532078			ATLANTA	GA	30353-2078	
TECHNICAL ARTS		6800 EDGEWATER COMMERCE PKY			ORLANDO	FL	32810	

**Exhibit B**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

- - - - - X  
In re: : Chapter 11  
:   
CIRCUIT CITY STORES, INC., et : Case No. 08-35653 (KRH)  
al., :   
:   
Debtors. : Jointly Administered  
- - - - - X

I, Evan J. Gershbein, being duly sworn according to law, depose and say that I am employed by Kurtzman Carson Consultants LLC ("KCC"), the Court appointed claims and noticing agent for the Debtors in the above-captioned cases.

I administer the KCC website for the above-captioned case at <http://www.kccllc.net/circuitcity> (the "KCC Website").

At my direction, on November 13, 2008, the 503(b)(9) administrative claim bar date of December 19, 2008 at 5:00 p.m. (Pacific) (the "503(b)(9) Administrative Claims Bar Date") was posted under the section of the KCC Website entitled Important Dates, Deadlines & Documents.

The items in the Important Dates, Deadlines & Documents section appear in chronological order. The 503(b)(9) Administrative Claims Bar Date is the fourth item on the list.

At my direction, on November 13, 2008, a link to the 503(b)(9) Administrative Claims Bar Date Notice was posted next

to the 503(b)(9) Administrative Claims Bar Date in the Important Dates, Deadlines & Documents section of the KCC Website.

On November 19, 2008, I posted the link to the 503(b)(9) Administrative Proof of Claim Form next to the 503(b)(9) Administrative Claims Bar Date in the Important Dates, Deadlines & Documents section of the KCC Website.

Dated: December 9, 2009

  
Evan J. Gershbein

State of California, County of Los Angeles  
Subscribed and sworn to (or affirmed) before me on this 9th day of December 2009, by Evan J. Gershbein, provided to me on the basis of satisfactory evidence to be the person who appeared before me.

Signature:



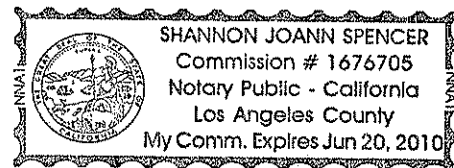




Exhibit C

**From:** Keech-Barker, Jo-Ann [JKeech-Barker@edc.ca]  
**Sent:** Tuesday, December 02, 2008 11:00 AM  
**To:** Boehm, Sarah B.  
**Subject:** RE: Circuit City

Thank you!

Jo-Ann

-----Original Message-----

**From:** Boehm, Sarah B. [mailto:sboehm@mcguirewoods.com]  
**Sent:** Tuesday, December 02, 2008 10:40 AM  
**To:** Keech-Barker, Jo-Ann  
**Subject:** RE: Circuit City

No, it is not too early to file a claim. You can go to [www.kccllc.net/circuitcity](http://www.kccllc.net/circuitcity) for information.

-----Original Message-----

**From:** Keech-Barker, Jo-Ann [mailto:JKeech-Barker@edc.ca]  
**Sent:** Tuesday, December 02, 2008 10:26 AM  
**To:** Boehm, Sarah B.  
**Subject:** RE: Circuit City

Is it too early to file Proof of Claims?

-----Original Message-----

**From:** Boehm, Sarah B. [mailto:sboehm@mcguirewoods.com]  
**Sent:** Tuesday, December 02, 2008 10:25 AM  
**To:** Keech-Barker, Jo-Ann  
**Cc:** Blanks, Daniel F.  
**Subject:** RE: Circuit City

The general bar date for filing proofs of claim has not yet been established.

-----Original Message-----

**From:** Keech-Barker, Jo-Ann [mailto:JKeech-Barker@edc.ca]  
**Sent:** Tuesday, December 02, 2008 10:22 AM  
**To:** Boehm, Sarah B.  
**Subject:** Circuit City  
**Importance:** High

Dear Ms. Beckett-Boehm,

Can you please tell me when is the Bar Date for filing proof of Claims? Export Development Canada (EDC) has pending claims against Circuit City and we would like to register these debts in EDC's name.

Thank you for your assistance in this matter.

Best Regards,

Jo-Ann Keech-Barker  
Recovery Assistant/Adjointe aux recouvrements  
Export Development Canada/Exportation et développement Canada  
151 O'Connor St.  
Ottawa, Ontario  
Tel: 613-598-3103  
Fax: 613-598-2837  
jkeech-barker@edc.ca